

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Criminal Action No.: 1:18-CR-58
JUDGE KLEEH**

BRIAN K. GRIFFEY,

Defendant.

ORDER AND REPORT AND RECOMMENDATION

This matter is before the undersigned pursuant to a *Pro Se* Motion to Dismiss and a *Pro Se* Motion for Expedited Status Conference filed by Defendant on January 4, 2019. (ECF Nos. 7 & 8, respectfully). In his Motion for Expedited Status Conference, the undersigned interprets this Motion to read that Defendant requests that the proceedings in this matter begin. An initial appearance is scheduled and held on January 11, 2019, at 10:00 a.m.¹ Defendant had previously been appointed counsel in this matter. (ECF No. 2). Accordingly, the undersigned **DENIES** this Motion as **MOOT**.

In his Motion to Dismiss, Defendant alleges that the traffic stop and charges against Defendant were not based on probable cause. Defendant also alleges that proceeding in this matter would violate his constitutional rights. Defendant further alleges that the appointment of Defense Counsel was not in Defendant's best interest. To the extent that this Motion is seeking the removal

¹ This Order and Report and Recommendation is entered as a substitution for a previous order that was entered, ECF No. 13, and will be entered *pro nunc tunc* following proceedings that were held on January 11, 2019. Any discussion of hearings that are to be held on January 11, 2019 have been held.

of his current counsel, the undersigned held a sealed hearing and a separate order will be entered regarding this matter.

With regard to the other parts of the Motion to Dismiss, the undersigned enters the following recommendation:

The motion filed by Defendant was filed *pro se* and has not been adopted by the Defendant's attorney, Scott S. Radman, who was appointed as counsel for the Defendant on August 8, 2018 (ECF No. 2) and remains the Defendant's counsel to date. This Court routinely denies as improvidently filed *pro se* motions in criminal cases where the Defendant is represented by counsel. This Court will not consider *pro se* motions filed while a Defendant is represented by counsel. See e.g., United States v. Carranza, 645 F. App'x 297, 300 (4th Cir. 2016) (holding district court was not obligated to consider *pro se* motion or objections because "[a] criminal defendant has no constitutional or statutory right to proceed *pro se* while simultaneously being represented by counsel"). See also, United States v. Ramage, No. 1:09CR61, 2009 WL 4110321, at *2 (N.D.W. Va. Nov. 25, 2009); United States v. Brooks, No. 1:09MJ71, 2009 WL 3365642, at *2 (N.D.W. Va. Oct. 19, 2009); United States v. Boulware, No. 1:09CR5, 2009 WL 972606, at *2 (N.D.W. Va. Apr. 8, 2009). Accordingly, because the Defendant has an attorney who has not adopted his client's *pro se* motions, the undersigned **RECOMMENDS** that the Court **DENY** the Motion to Dismiss (ECF No. 7) as improvidently filed.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and

Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

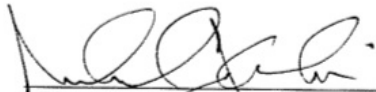
Furthermore, the undersigned **VACATES** the Order previously entered into, ECF No. 13, and strikes it from the Record.

It is so ORDERED and RECOMMENDED.

The Court directs the Clerk to transmit copies of this Order to all Counsel of record and all appropriate agencies, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

Entered: January 11, 2019

Nunc pro tunc


MICHAEL JOHN ALO
UNITED STATES MAGISTRATE JUDGE